

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICHARD HANNEL,	)	8:05CV0009
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
JO ANNE B. BARNHART,	)	
Commissioner of Social Security	)	
Administration,	)	
	)	
Defendant.	)	

This matter is before the court upon Plaintiff's application for attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). (Filing 14.) Plaintiff requests fees in the total amount of \$887.40, which represents 5.8 hours of work by his attorney, at an average hourly rate of \$153.00.<sup>1</sup> Plaintiff also requests reimbursement for the \$150.00 filing fee. (Filing 15 at 6.) The Commissioner does not object to the award of \$887.40 under the EAJA, or to the reimbursement of costs, but does object to the award of costs under EAJA. (Filing 18.)

The court has determined that Plaintiff was indeed the prevailing party in this action, as this matter was remanded to the Commissioner for further action; that the application for fees was filed in a timely fashion; and that the position of the Commissioner was not substantially justified in light of the remand of the action for further proceedings. Plaintiff therefore is entitled to an award of reasonable attorney fees, and the Commissioner agrees that the requested fees of \$887.40 is reasonable.

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<sup>1</sup> This average hourly rate equals the statutory maximum of \$125.00, adjusted on a monthly basis to account for inflation since March 1996. (Filing 16 ¶13.)

However, Plaintiff also seeks reimbursement of the \$150 filing fee. The filing fee is properly recovered through taxation of costs and may not be recovered as part of an EAJA fee. The request for reimbursement of costs will be denied without prejudice to Plaintiff filing a verified bill of costs as required by NECivR 54.1(b).

Accordingly,

IT IS ORDERED that:

1. Plaintiff's application for attorneys fees pursuant to the Equal Access to Justice Act (filing 14) is granted;
2. Plaintiff's request for reimbursement of costs is denied without prejudice; and
3. By separate document, the court shall enter judgment for Plaintiff and against Defendant, providing that Plaintiff is awarded attorney fees of \$887.40.

March 3, 2006.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge